

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1037

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

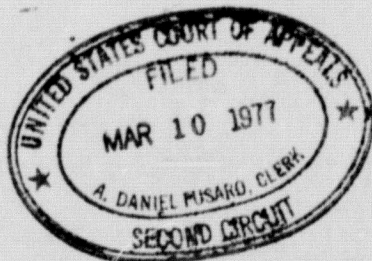
-against-

HARRY HASLAM,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

APPENDIX OF DEFENDANT-APPELLANT



TERENCE L. KINDLON, ESQ.
Attorney for Defendant-Appellant
488 Broadway
Albany, New York 12207

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

PETER FERRARO, HARRY HASLAM,
and FRANK BARNES

INDICTMENT

(VIO: Title 18, U.S.C.
Sections 2115 and 641)

Cr. No. 76-CR-27

COUNT I

THE GRAND JURY CHARGES:

That on or about the 21st day of February, 1976,
at Comstock in the State and Northern District of New York,
PETER FERRARO, HARRY HASLAM and FRANK BARNES, the defendants
herein, did forcibly break into a building used in part as
a Post Office of the United States at Homer Avenue, in Com-
stock, New York. PETER FERRARO, HARRY HASLAM and FRANK
BARNES then intending to commit larceny in that part of the
building then being used as a Post Office of the United
States.

In violation of Title 18, United States Code,
Section 2115.

COUNT II

THE GRAND JURY FURTHER CHARGES:

That on or about the 21st day of February, 1976,
at Comstock in the State and Northern District of New York,
PETER FERRARO, HARRY HASLAM, and FRANK BARNES, did steal,
purloin and knowingly convert to their own use, money and
things of value of the United States, to wit: \$100.00 in
United States currency; \$1,856.47 in United States postal
stamps; 156 blank United States postal money orders; one
United States postal money order imprinting machine; one
United States postal money order validating plate; one

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Diebolt Safe, serial number 62117; all of which have a value in excess of \$100.00 of goods and property of the United States.

In violation of Title 18, United States Code, Section 641.

A TRUE BILL

H Edward V. Horvath
FOREMAN

H James M. Sullivan, Jr.
UNITED STATES ATTORNEY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PETER FERRARO, HARRY HASLAM and
FRANK BARNES,

Defendants.

NOTICE OF
MOTION

76-CR-27

PLEASE TAKE NOTICE that upon the annexed affidavit of Terence L. Kindlon, Esq. counsel to the defendant, Harry Haslam, the indictment herein and all of the proceedings heretofore had in connection with this prosecution, the undersigned will move before this court on or before the trial date of this matter for an Order suppressing any and all alleged inculpatory statements or admissions of the accused and precluding the government from offering or using the same in evidence upon a trial of this accused in this or any other criminal prosecution, upon the ground that such alleged statements or admissions were and are inadmissible and involuntary as a matter of law, and that such alleged statements were illicit under inherently coercive circumstances and are a direct and proximate result of constitutionally impermissible interrogation or activity by certain governmental agents in flagrant contravention of the accused's constitutional rights and privileges under the Fourth, Fifth and Sixth Amendments of the United States Constitution; and/or were and are the poisoned fruits of an invalid arrest or seizure or other unconstitutional conduct, and were and are otherwise involuntary within the meaning and purview of 18 USC Sec. 3501, and for such other and further relief as to this Court may seem just and proper.

TOGETHER with an Order suppressing any and all leads, information or evidence derived from such alleged inculpatory statements or admissions extracted from the accused and precluding the government from offering or using such information or evidence upon a trial of this accused in this or any other criminal prosecution, upon the ground that the same is the

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direct and proximate poisoned fruit of an involuntary statement or admission, and for such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that the accused reserves the right to make any and all further motions which may become necessary and appropriate by reason of information generated in the course of any hearings conducted with respect to any of the issues raised by this motion.

Dated: June 28, 1976

ROSENSTOCK & TURNER
Attorneys for Defendant,
Harry Haslam
Office and P.O. Address
488 Broadway
Albany, New York 12207
Tel: 518-465-1477

TO: OFFICE OF THE UNITED STATES ATTORNEY
Northern District of New York
United States Court House and Post Office
Albany, New York 12207

CLERK, UNITED STATES DISTRICT COURT
Northern District of New York
Federal Post Office Building
Utica, New York 13503

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

PETER FERRARO, HARRY HASLAM and
FRANK BARNES,

Defendants.

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:
CITY OF ALBANY)

TERENCE L. KINDLON, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the State of New York and in the United States District Court for the Northern District of New York.

2. I am the attorney for Harry Haslam, one of the accused above named, and I make this affidavit in support of the relief requested in the appended Notice of Motion.

3. The defendant Harry Haslam alleges that any statement or admission that might have been made by him to a public servant engaged in law enforcement activity or as their agent or under their control, were obtained in violation of his rights as guaranteed to him by the Fifth Amendment of the United States Constitution of the United States Constitution and that defendant Harry Haslam asks this Court for an Order directing that any such statement not be admissible in this proceeding against him on the ground that any such statements were extracted without a timely and full recitation of the Miranda warnings and an express waiver thereof.

4. In the event that this Court does not grant this suppression motion on the papers submitted, it is respectfully requested that a hearing be had with respect to the issues raised.

5. At the time of his arraignment on the subject indictment, the accused plead not guilty to the indictment and stands to date on that plea.

6. The allegations submitted in this affidavit in support of the

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relief requested in the appended Notice of Motion are predicated upon a review of various documents submitted to your deponent by the government, an analysis of the indictment, a review and analysis of the law reasonably believed to be relevant, an investigation of the charges, discussions with your deponent's client and a review of the applicable statutes and decisional law thereunder.

7. No prior request for any of the relief sought herein has been made.

WHEREFORE, your deponent respectfully requests that this Court grant, in all respects, the motions herein.

Terence L. Kindlon
Terence L. Kindlon

Sworn to before me this
28 day of June, 1976.

Alberta Hans
Notary Public

ALBERTA HANS
Notary Public, State of New York
Residing in Albany County
Commission Expires March 24, 1977

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 - - - - -X

4
5 UNITED STATES OF AMERICA,
6 Plaintiff

7
8 -against-

9
10 HARRY HASLAM,
11 Defendant

No. 76-CR-27

12
13 - - - - -X

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16
17 Proceedings in the above-entitled
18 matter came on before the United States District Court,
19 Northern District of New York, Federal Building,
20 Syracuse, New York, on October 6, 1975, at 10 a.m.,
21 in the Chambers of and before the Honorable Lloyd F.
22 MacMahon, U. S. District Judge, sitting by designation,
23 presiding.
24
25

1 A P P E A R A N C E S :

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The Honorable JAMES M. SULLIVAN, JR.,
United States Attorney, Northern District of New York,
Federal Building, Syracuse, New York, by: William J.
Dreyer, Assistant United States Attorney, of counsel.

-and-

Terence L. Kindlon, Esq., 488 Broadway,
Albany, New York, of counsel.

1 THE COURT: Good morning. Let the record
2 note that we are holding this in Chambers, simply
3 because there is no central jury room where we could
4 put the whole panel of jurors attending this hearing,
5 and it is not anticipated that the hearing will take
6 more than half an hour or forty-five minutes, according
7 to Counsel's estimate.

8 Sit down, gentlemen, and we will proceed.

9 MR. DREYER: The Government calls Mr.

10 Joseph Lewis.

11 J O S E P H L E W I S, having been duly
12 sworn, was examined and testified as follows:

13 BY MR. DREYER:

14 Q What is your occupation?

15 A Investigator for the New York State Police.

16 Q And where are you employed?

17 A South Glens Falls, New York.

18 Q And how long have you been employed as a State Police
19 Investigator?

20 A I have been investigator for approximately ten years.

21 Q And could you tell the Court very briefly what your
22 duties as investigator are?

23 A Criminal investigations of various types, all felony
24 investigations in my area.

25 Q I now direct your attention to February 21st, 1976, and

1 do you recall that date?

2 A I do.

3 Q And did you have occasion to investigate an incident at
4 the United States Post Office, Homer Avenue, Comstock,
5 New York?

6 A Yes, I was contacted by my office to proceed to that
7 location.

8 Q Where is Comstock, New York?

9 A Comstock, New York is in Washington County, the Town of
10 Fort Ann, approximately three miles north of the Village
11 of Fort Ann.

12 Q And would you describe very briefly the nature of the
13 investigation which was going on at that time?

14 A The State Police had received a complaint that there
15 was a burglary in process at the United States Post
16 Office at Comstock, New York. This complaint was
17 received from the Correction Department, while they
18 had one of their guards making a routine check.

19 Q And you personally went to the scene?

20 A I did.

21 Q And what time did you arrive?

22 A Approximately 10:20.

23 Q And what did you do?

24 THE COURT: That is p.m., was it?

25 BY MR. DREYER:

1 Q What time did you arrive at the scene?

2 A Approximately 10:20 p.m.

3 Q And what did you observe?

4 A At the scene I observed Trooper Parquet, and he briefed
5 me as to what had occurred, and he showed me the various
6 things, the broken window in the Post Office, and the
7 rear door of the Post Office on the east side of it
8 was open, and there was a truck parked there, and it
9 was a Dodge, green cab and a silver box. The plate
10 number was 4223LU, and it was a New York commercial
11 registration.

12 Q Now, as part of your investigation, did you or any
13 other police officer check the registration of that
14 vehicle?

15 A I was advised by the trooper that he had run a data
16 check through the New York State Police computer
17 system with the Motor Vehicle Bureau and it came back
18 that a Frank W. Barns of Kingston, New York, was the
19 owner.

20 Q And on the evening of February 21, you were personally
21 aware that the truck was registered to Frank Barns of
22 Kingston, New York?

23 A I was aware of this, yes.

24 Q And on the evening of February 21, did you become aware
25 of the first arrest in the case?

1 A Yes, while in the area, conducting part of the investi-
2 gation, I received a transmission that a subject had
3 been taken into custody on a railroad track,
4 approximately about a mile to a mile and a half from
5 the Post Office.

6 Q Do you know who took this person into custody?

7 A Trooper Parkins and Zone Sergeant Carlson.

8 Q Did you question the person?

9 A I traveled to Route 4, which parallels the railroad
10 tracks, and Trooper Parkins and Carlson brought him
11 to the roadway, and the Zone Sergeant Carlson and
12 myself took custody of the subject, and transported
13 him to the State Police at Whitehall.

14 Q Without getting into your procedural matters, which
15 preceded any discussion with the person taken into
16 custody, would you tell the Court whether or not that
17 person identified himself to you?

18 A Originally as John Ruso, of New York City, and later
19 he changed his name to Peter Farraro of Kingston,
20 New York.

21 Q And did you discuss with him the burglary at the Post
22 Office at Comstock?

23 A I did.

24 Q And did he tell you anything about that?

25 A Originally he denied any implication.

1 MR. KINDLON: I have to object to this
2 line of questioning. I think that it is getting into
3 a lot of hearsay.

4 MR. DREYER: This is just for the
5 purposes of showing what was in Officer Lewis's mind
6 so that when he went to --

7 MR. KINDLON: All right, I will withdraw
8 the objection.

9 THE COURT: Go ahead. He withdrew it.

10 THE WITNESS: All right. Originally he
11 denied any implication, and later he made the statement,
12 when I asked who was with him, and he said he was alone
13 at this time.

14 BY MR. DREYER:

15 Q I know direct your attention to the early morning hours
16 of February 22, 1976. Do you recall that day?

17 A I do.

18 Q And that was a Sunday?

19 A Yes, it was.

20 Q And where were you on Sunday morning?

21 A I was still in the general area of the investigation,
22 the burglary. I had proceeded to the Village of Fort
23 Ann for the purpose of --

24 THE COURT: What was the date?

25 BY MR. DREYER:

1 Q Was that February 22nd, and that would be a Sunday
2 morning?

3 A Yes, I proceeded to Fort Ann for the purpose of
4 obtaining a cup of coffee.

5 Q And how far is Fort Ann from the Comstock Post Office?

6 A In a direct line, it would be three miles, I think.

7 Q And by road?

8 A It might be up to five.

9 Q And what was the purpose of your presence in Fort Ann?

10 A I went down to obtain a cup of coffee and some breakfast.

11 Q Did there come a time when anything unusual occurred on
12 that morning?

13 A Well, in the Village of Fort Ann, as I arrived in the
14 village, a radio transmission was given out for any
15 car in the area to respond to an unknown subject on the
16 porch on a street in Fort Ann, the Ferran residence.

17 Q Did the transmission explain what the contents of the
18 phone call was?

19 A They had received a call that there was a stranger on
20 the porch of this residence.

21 Q Now, did you go to the Ferran home in response to that
22 call?

23 A I did.

24 Q And is there an explanation as to why you responded,
25 instead of a local officer?

1 A Another car was assigned, but I was the nearest vehicle
2 in the area, the nearest unit and I responded
3 immediately.

4 Q And what time did you arrive at the Ferran home?

5 A It would only be approximately 8:20 or 8:25, that
6 would be an approximate time.

7 Q At the time that you went to the Ferran home and
8 responded to the call, did you suspect that the phone
9 call from the Ferran's was in any way related to the
10 postal burglary?

11 A I had no definite knowledge of this, but it was
12 something that should be checked out.

13 Q Now, what happened after you arrived at the Ferran home?

14 A I arrived at the Ferran home, and I observed the
15 subject on the porch and I stopped my vehicle, which
16 was an unmarked police car, and I was in civilian
17 clothes. As I exited the vehicle and came around the
18 back, I identified myself as a State Policeman.

19 Q And what occurred next?

20 A I asked the subject, who I observed there, where did he
21 reside, and he said, "Here".

22 Q And what did you say in response to that?

23 A I said, "No, you don't." We have a complaint, and what
24 is your name, and do you have any identification? And
25 at this time, the subject moved from the back end of the

1 porch toward the other end of the porch, and I was
2 moving toward him at the same time, and he had his hand
3 in his pocket. At this time he identified himself as
4 a Vinny Schoonmaker or Schemerhorn, and he originally
5 said from Albany, and upon a question as to where in
6 Albany, he came out with a bit, no, he was from
7 Kingston.

8 Q All right, now --

9 THE COURT: I am sorry but I missed the
10 last part. He said he was Vinny Schoonmaker or what?

11 THE WITNESS: Schoonmaker from Albany and
12 when I asked him as to where in Albany, he then changed
13 his residence to Kingston.

14 BY MR. DREYER:

15 Q Now, at the time he said he was from Kingston, what did
16 you do?

17 A At that time I had come up to the subject, and I
18 started him back toward the car, and as I brought him
19 over to the car I discussed what he was doing in the
20 area, and originally he said his car had broken down --

21 THE COURT: Did you arrest him?

22 THE WITNESS: No, sir.

23 THE COURT: You brought him over to the
24 car?

25 THE WITNESS: I was walking over toward

1 the car. I didn't bring him. We were walking toward
2 the car.

3 THE COURT: How come he was walking
4 toward the car?

5 THE WITNESS: I called him over to there.

6 BY MR. DREYER:

7 Q Proceed.

8 A As we were walking, I was talking to him as to what he
9 was doing in the area, and he said his car had broke
10 down, and later he changed this to the fact that he
11 had been separated from some friends, and this time I
12 made a statement to him; yes, you probably got separated
13 from your friends back at the Post Office where it was
14 broken into at Comstock, and I said, "Before going any
15 further, I want to advise you of your rights," and that
16 is when I advised him of his rights and patted him down
17 for a weapon, because we had information that the first
18 subject arrested, Farraro, carried a weapon, and I
19 patted him down.

20 Q You patted him down?

21 A Yes.

22 Q And it is your testimony that you advised him of his
23 rights as you patted him down?

24 A Yes.

25 Q And will you tell us what he was advised of?

1 A He was advised of his right to remain silent, and
2 anything that he said could and would be used against
3 him in a court of law, that he was advised of the right
4 that if he needed an attorney, he could have an attorney
5 present during the interview if he so wished, and also
6 that he could have an attorney free of charge if he
7 could not afford and desired one prior to the interview.

8 Q Did you use a card to advise him of his rights?

9 A I do not.

10 Q And you have been an investigator for ten years?

11 A Yes.

12 Q Can you tell the Court on how many occasions you
13 advised someone of their rights without the use of a
14 card?

15 A Too numerous to remember.

16 Q Now, would you tell the Court what occurred when you
17 completed the fourth right that you advised him of?

18 A After his rights, as I said before this, yes, you
19 became separated from your friends, and I feel that
20 your friends back at the Post Office in Comstock, and
21 then I advised him of his rights, and he said, "Yes, I
22 know my rights. I was there."

23 Q Now, what did you do when he said, "I know my rights;
24 I was there?"

25 A I talked to him and I said you understand everything

1 and you are willing to talk to me? He said, "Yes, I
2 was there at the Post Office, yes," and from here on
3 I placed the handcuffs on him and placed him in the car
4 and placed him under arrest.

5 Q You placed him under arrest at this time?

6 A Yes.

7 Q And, Mr. Lewis, how much time elapsed between the time
8 that you arrived at the Ferran home and the time that
9 you issued the Miranda warning?

10 A Probably only a couple of minutes; two or three minutes.

11 Q And how much time elapsed between the time that you
12 arrived at the Ferran home, and the time that you
13 ultimately placed him in the car?

14 A Probably within five or six minutes.

15 Q And after you placed Mr. Haslam in the car, did any
16 further discussion occur?

17 A Yes, I did discuss the case with him and we were in
18 route to Whitehall.

19 Q Explain to the Court the nature of the discussion.

20 A It was conversation back and forth that I was interested
21 in who else was involved with him, and this Mr.
22 Schemerhorn, who at the time was identifying himself
23 as Schoonmaker or Schemerhorn, and he stated that he
24 didn't want to be a rat on his friends and he didn't
25 want to tell us who and then I concentrated on finding

1 out the number of people with him, to see if there was
2 any additional, more than we believed of two or three.

3 And we had a conversation back and forth,
4 and as we approached the Whitehall station, I told him,
5 and I said, "Listen, we have already arrested one
6 subject, and when we get in the station I will show you
7 the fingerprints of Farraro," and the remark was made
8 by Mr. Schemerhorn, as he identified himself: "Oh,
9 you got Pete?" Answer, "Yes", and at this time we
10 arrived at the Whitehall station, and we went inside
11 and continued the conversation. During the conversation
12 it was brought out that there was in fact, three, it
13 was brought out, and I said that we have the truck that
14 belonged to Frank W. Barns, and at this he nodded his
15 head, yes, and was he being the third subject, and he
16 nodded his head, yes.

17 Q Did Mr. Schemerhorn ever tell you that he was a person
18 other than Mr. Schemerhorn?

19 A Yes; about the time that we arrived at the station and
20 went into the Farraro part, he said I'd better tell
21 you -- I said, "Is that your real name?" He said,
22 "I'd better tell you that my name is Harry Haslam."

23 Q And did he tell you where he was from?

24 A Kingston, New York.

25 Q And did Mr. Haslam say anything to you, either

1 in the automobile or at the police station with respect
2 to his fleeing the scene?

3 A Yes, we had a conversation in the station about, you
4 know, how he traveled, and he said where he was heading
5 for, and he was trying to get to Whitehall, and he
6 came out near Fort Ann. I said we had troopers behind
7 you in the woods, and he said, "I saw flashlights," or
8 "lights," excuse me. He said, "I saw lights".

9 Q At sometime after you arrested Mr. Haslam, did you take
10 anything from his possession?

11 A Yes, I searched the subject at the station completely
12 and emptied his pockets. I found two scraps of paper
13 in his pocket.

14 Q And was there anything significant about any one piece
15 of paper?

16 A On one piece of paper there was a phone number. This
17 phone number was the same phone number that, earlier in
18 the evening, apparently Farraro requested to make a
19 call to, from the station.

20 Q Did anyone place that call?

21 A I dialed the number for him and it was not connected,
22 and later on someone else did and I think it was
23 connected. At the time he wanted to dial that number
24 he told me it was his residence.

25 Q Now, returning for a moment to your initial appearance

1 on the Ferran porch. What were the weather conditions
2 that morning?

3 A It had been raining off and on throughout the night and
4 in the morning. Sometimes quite heavily, and the
5 temperature was probably in the area of 40.

6 Q How about the conditions the night before?

7 A It had rained off and on throughout the night, and the
8 temperature I would say stayed in the 30's to the low
9 40's.

10 THE COURT: Was the porch open or
11 enclosed?

12 THE WITNESS: The porch was open and
13 has a roof over it.

14 THE COURT: Where was it in Fort Ann?
15 Was it in the center of the village or where?

16 THE WITNESS: The main intersection,
17 approximately maybe 300 feet or 400 feet down the road
18 from the main intersection of Fort Ann. It is one of
19 the main intersections, and Route 149 comes into the
20 Village of Fort Ann. That is the entry.

21 Q Would you describe the physical conditions of the
22 subject at the time that you --

23 A The subject was wet, and he appeared tired. He had
24 some grass and needles and like that on his clothing.

25 Q And you said before that he had his hand in his pocket?

1 A Yes, he did.

2 Q And do you know why he had his hand in his pocket?

3 A He told me he was cold.

4 THE COURT: Was he awake?

5 THE WITNESS: Yes, he was.

6 BY MR. DREYER:

7 Q Was his manner of speech affected by his condition?

8 A I did not feel so, sir.

9 Q Can you describe his clothing in terms of wetness or
10 dryness?

11 A It was wet.

12 Q All of the clothing?

13 A What I could see of him.

14 Q And did you provide him with any dry clothing at any
15 time?

16 A I don't remember. He may have had something dry back
17 at the station to put on. I do not remember this.

18 Q Now, can you characterize for the Court his degree of
19 incapacity, if any, as a result of the weather conditions?

20 A Other than being slow moving, that is all.

21 Q And did he require aid to go to the car?

22 A He was walking under his own power.

23 Q At any time on the porch did the subject request aid for
24 his condition?

25 A No, he did not.

1 A I can.

2 Q Is he in the room now?

3 A He is. He is sitting there. (Indicating).

4 Q And you are pointing to him?

5 A Right there.

6 MR. DREYER: Let the record reflect that
7 the witness pointed to Harry Haslam, the defendant in
8 this case.

9 We have no further questions.

10 THE COURT: Do you have any questions?

11 BY MR. KINDLON:

12 Q Mr. Dreyer, Your Honor, and Investigator Lewis, isn't
13 it, sir?

14 A Yes.

15 Q Sir, you said that you received the first report at
16 9 p.m. on the 21st, is that correct?

17 A No, I did not say that. I heard the initial call of the
18 complaint going out to the patrol cars. I was enroute
19 to another incident that I had been called out of my
20 residence on.

21 Q Where were you when you received that report?

22 A On the initial one, it was Interstate 87, headed for
23 another investigation.

24 Q Is that the Northway?

25 A That is the Northway.

1 Q And where were you located on the Northway at that time,
2 sir?

3 A The initial call I heard?

4 Q Yes, sir.

5 A It would have been in the area of Glens Falls; the City
6 of Glens Falls.

7 Q And what time did you respond to that call?

8 A Probably in the area of 9:15 or 9:30, somewhere there.
9 I departed the other investigation and proceeded to
10 this one.

11 Q And would it be safe to say, then, that you took an
12 hour getting to the scene of the crime?

13 A It was probably 10:20 by the time I arrived.

14 Q How long had you been on duty at that point?

15 A On duty?

16 Q Yes, sir.

17 A I had been off duty for approximately four hours. I
18 only came back on duty at the time of this call. We
19 have reserve duty, after we do our normal eight to four
20 duty.

21 Q Overlooking the technicalities of whether you were on
22 duty or off duty, how long had you been doing or
23 actively engaging in the course of doing police work?

24 A During what period of time?

25 Q Leading up to the time when you heard the first report

1 of the incident?

2 THE COURT: You mean that day?

3 BY MR. KINDLON:

4 Q Yes, sir.

5 A The total in that day?

6 Q Yes, sir.

7 A Probably eight or nine hours of duty.

8 Q You had been on duty prior to receiving the call?

9 A Between eight o'clock in the morning and eight o'clock
10 at night, I had put in about eight or nine hours of
11 duty time.

12 Q Now, you say that after you finished the investigation
13 that you were working on, you then proceeded to
14 Comstock, New York, is that correct?

15 A That is correct.

16 Q And at that time, you had a conversation with one of
17 your subordinate State Troopers, is that correct?

18 A Yes, one of the uniformed members of our outfit, yes,
19 sir.

20 Q Yes, sir. And then I believe you testified in
21 response to Mr. Dreyer's question that you then
22 traveled north; you then followed certain footprints
23 that were visible on the ground?

24 A No, I did not follow the footprints. I was briefed as
25 to the fact that uniformed troopers were in the process

1 of tracking these footprints. I personally did not
2 follow any footprints.

3 Q What was your next response?

4 A I was at the scene, and doing the investigation, and I
5 was coordinating with the other departments, which was
6 the Washington County Sheriff's Office, and they had
7 some roadblocks and checkpoints, and at that time,
8 during this period of time, I received a transmission
9 that a subject had been taken into custody by two of
10 the men doing the tracking on the railroad tracks
11 approximately a mile or two miles -- well, about half-
12 way.

13 Q And what time did you receive that information?

14 A That would have been probably 20 to 25 minutes after I
15 arrived at the scene; approximately 10:40 to 10:45.

16 Q And did you then proceed to the point where this man
17 had been apprehended?

18 A I did.

19 Q Now, without getting involved in the transactions that
20 occurred between you and the person who had been
21 apprehended, when did you then return from the scene of
22 his apprehension?

23 A To what?

24 Q Well, I think it was at the scene of the crime or at
25 the Whitehall substation?

1 A Immediately after I arrived at that location, we
2 traveled to the Whitehall station with the subject.

3 Q Now, after you left that subject behind, what did you
4 do then?

5 A I proceeded back to the area of the incident. I
6 conferred with the lieutenant who was the ranking
7 officer at the scene by that time, as to the extent of
8 the investigation.

9 Q And how long did you remain there?

10 A I remained there all night.

11 Q All night?

12 A Yes, sir.

13 Q At what time did you leave? Was it before or after
14 sun-up?

15 A I did not leave. I was in the area the whole evening.
16 The area that we are talking about, I was staying
17 within five miles of the Post Office area, roughly,
18 checking different checkpoints, and I had gone back
19 to the Whitehall station on a couple of occasions to
20 contact my Kingston office to have them run further
21 investigation on Mr. Barns and Mr. Farraro as to
22 possible associates and other things.

23 THE COURT: Were you working all night?

24 THE WITNESS: Yes, sir. I did work all
25 night.

1 MR. KINDLON: If I may; we intent to, by
2 stipulation, introduce a map into this hearing, and I
3 think that it might help if I were to bring the map in
4 now. It is a contour map of the United States Geological
5 Survey. But perhaps you will let me put in the map?

6 THE COURT: My son-in-law comes from
7 Whitehall and his mother used to be the secretary of
8 Judge O'Brien up there, and I am familiar with the
9 area.

10 (A map was placed on the desk for the
11 use of the Court.)

12 MR. DREYER: The record should reflect
13 that I have already agreed to enter into a stipulation.

14 THE COURT: We will mark this as
15 Exhibit A, Government's Exhibit A.

16 MR. DREYER: How about Suppression
17 Exhibit A?

18 THE COURT: That is all right.

19 (Map marked as Suppression Exhibit A,
20 for identification.)

21 BY MR. KINDLON:

22 Q Now, Investigator Lewis, directing your attention to
23 the map, which has been put in evidence, which is
24 designated as the United States Department of Army
25 Corps of Engineers, Geological Survey Map, Fort Ann,

1 Quadrangle 7 1/2 - 0.

2 Can you show me where the Whitehall substation is
3 located?

4 A No, I cannot, because it is not on the map. It is
5 right up here (Indicating).

6 THE COURT: That is pointing to an area
7 north of the map?

8 THE WITNESS: Yes.

9 BY MR. KINDLON:

10 Q So, in other words, sir, after you left the scene of
11 the crime, which I believe would have been in the area
12 immediately to the northwest of the gate house of
13 Comstock prison, is that correct?

14 A Right in this area.

15 THE COURT: That doesn't mean a thing.
16 Mark it or put a circle around it.

17 MR. KINDLON: Do you know exactly where
18 it is?

19 THE COURT: Put an "S" there for "Scene."
20 Let the record reflect a red letter "S"
21 at the scene of the crime.

22 BY MR. KINDLON:

23 Q Now, sir, after you left the scene of the crime that is
24 marked with a letter "S", where did you proceed?

25 A Originally?

1 Q Yes, sir.

2 A When I got the first transmission, they had taken the
3 subject into custody, and he was taken into custody and
4 you can see the railroad tracks parallel to the road,
5 and this bridge comes across, and he was taken into
6 custody right there, and that is Number one, Mr. Farraro.

7 Q And what time was that?

8 A As I say, approximately 10:45 -- 10:40 or 10:45 in that
9 area.

10 THE COURT: That is Mr. Farraro?

11 THE WITNESS: Yes. Later identified
12 as Peter Farraro, and he originally identified himself
13 as --

14 THE COURT: We don't care about that.

15 BY MR. KINDLON:

16 Q You testified, I believe, that after that you returned
17 to the scene of the crime?

18 A No, I then proceeded from here, from Mr. Farraro and
19 Sergeant Carlson, to a location, and it was approximately
20 in here --

21 MR. DREYER: Would you describe it for
22 the record?

23 THE WITNESS: Well, this is where the
24 State Police was at Whitehall, on Route 22, approximately
25 a mile and a half south of the village.

1 MR. DREYER: It does not appear on the
2 map?

3 THE WITNESS: It does not appear on the
4 map.

5 THE COURT: How far from the top of the
6 map?

7 THE WITNESS: Probably a mile from the
8 top of the map.

9 THE COURT: What is the Route number
10 there?

11 THE WITNESS: Route 22. It is right on
12 Route 22 right in this area here.

13 BY MR. KINDLON:

14 Q Now, what time did you leave that State Police substation,
15 sir?

16 A I would only be estimating; probably an hour.

17 Q So that would be at what time in the morning?

18 A It was still at night, and probably sometime around
19 midnight.

20 Q And where did you go immediately after you left?

21 A Immediately after I left there?

22 Q Yes.

23 A First of all, I came right back down to the scene. I
24 came back, and my car was still down here, I was with
25 Sergeant Carlson at that time, and I returned in my car

1 back to the scene.

2 Q What were the weather conditions like at this time?

3 A At this time, a light misty rain.

4 Q Had there been any heavy rains since the time that you
5 first arrived at the scene of the crime?

6 A That early, no.

7 Q Now, how long did you remain at the scene of the crime,
8 or if it would be easier, what time did you leave there?

9 A I would not be able to pinpoint the time, as I say.
10 I remained in the area just north of the Whitehall
11 station, and Fort Ann, on these county back roads,
12 coming out of Fort Ann until right through the night,
13 until the last man was apprehended the next morning.
14 I was in that area, that general area, and sometimes I
15 went back to the station a couple of times to contact
16 my Kingston office, and my Glens Falls office.

17 Q Would it be safe to say that you traveled on --

18 A Route 22?

19 Q This is a United States Route, or a State Route 22?

20 A That is 2, and 22 and 4 United States for going north.
21 They go together up here, and this is 22 coming in here,
22 and this is Route 4 coming up.

23 Q Your best estimate: how many times did you travel the
24 distance between the scene of the crime, and the State
25 Police substation that night?

1 MR. DREYER: Your Honor, may I interpose
2 an objection here? I realize that he is trying to
3 establish that the witness worked all night. But I
4 don't understand the purpose of having him explain the
5 times.

6 THE COURT: I don't either. But maybe
7 you can enlighten me?

8 MR. KINDLON: It is not a major point,
9 but I am striving to establish what the weather conditions
10 were like throughout the night.

11 THE COURT: He stated it was raining,
12 and whatelse do you need? He worked all night. What
13 difference does it make if he went up and down there
14 all night, or didn't? If he is tired, say it.

15 MR. KINDLON: Very well, Your Honor.

16 THE COURT: I understand the thrust of
17 your motion, that he was denied his Miranda warning,
18 am I right, or he was retained too long, and it seems
19 to me, as I remember your papers, you moved on those
20 grounds.

21 MR. KINDLON: But I am contending it was
22 involuntary confession not only because of the failure
23 to give the Miranda warning but I will also contend,
24 in the course of the testimony that he was incapable of
25 giving --

1 THE COURT: That maybe, but I don't see
2 what the officer's riding up and down all night has to
3 do with either of those two points, and I will sustain
4 the objection.

5 BY MR. KINDLON:

6 Q Now, Investigator: could you show the Court, please,
7 where, on this map, it was that you first saw Mr. Harry
8 Haslam?

9 A It was around 149 coming out of this road here, and --
10 it would be on Route 149 or a street in the Village of
11 Fort Ann, and it would be right off the intersection
12 here (Indicating).

13 THE COURT: Mark it with an "H" for
14 Haslam.

15 THE WITNESS: Yes, sir.

16 (The Witness marked the Exhibit.)

17 THE WITNESS: Right in this area here on
18 the north side of 149, on the porch.

19 MR. KINDLON: I don't think that we need
20 that map anymore and we can sit down.

21 BY MR. KINDLON:

22 Q Your best estimate, once again, sir, of what time you
23 first saw Mr. Haslam?

24 A It was sometime in the morning.

25 THE COURT: Was it daylight?

1 THE WITNESS: It was daylight.

2 BY MR. KINDLON:

3 Q Was it raining at that time?

4 A Yes, I believe it was raining. It had rained, as I
5 say, off and on all night, and sometimes quite heavily.

6 THE COURT: Tell me when you first
7 observed him, what was he doing?

8 THE WITNESS: Mr. Haslam? He was
9 standing on the porch of the back, leaning --

10 THE COURT: On the back?

11 THE WITNESS: The porch was on one side
12 and it was a narrow porch and he was turned and he was
13 right in the corner.

14 THE COURT: Was that visible from the
15 street?

16 THE WITNESS: Yes, it is.

17 THE COURT: All right.

18 BY MR. KINDLON:

19 Q Do you remember how he was dressed at that time?

20 A To the best of my recollection -- I am trying to think --
21 I believe that he had some kind of a field jacket on,
22 or a jacket on.

23 Q Would it be like an Army field jacket?

24 A Yes, I believe it would be that, to the best of my
25 recollection. One of them had it and I believe it was

1 him.

2 Q Do you remember seeing him wear a shirt?

3 A No, I don't remember. I remember he had something on
4 under it, but I don't remember what it was.

5 Q And did you notice what, if anything, he was wearing
6 on his feet?

7 A Yes, he had shoes on. They were of the type like a
8 work shoe, to the best of my recollection.

9 Q Can you describe the condition of his clothing?

10 A It was wet.

11 Q Would you say it was soaking wet?

12 A Quite wet.

13 Q And when you observed him, would you say that the
14 clothing was wet all of the way through the skin?

15 A As I say, I can only testify as to his outer clothing,
16 and it was wet; quite wet.

17 Q You testified before a Federal Grand Jury impaneled
18 by the United States District Court in and for the
19 Northern District of New York?

20 A I did.

21 Q On March 10th, 1976, is that correct?

22 A Yes, that is correct.

23 Q And at that time, did you offer certain testimony
24 concerning whether Mr. Haslam, when you first saw him,
25 had his hands in his pockets?

1 A I don't remember, but I believe I did, yes. He did
2 have his hands in his pockets.

3 Q Do you recall asking him to remove his hands from his
4 pockets?

5 MR. DREYER: Are you referring to the
6 Grand Jury testimony, or is that a new question?

7 THE COURT: All right, yes.

8 THE WITNESS: Yes, I remember asking him
9 to remove his hands from his pockets.

10 BY MR. KINDLON:

11 Q And what was his response, or what did he say?

12 A Words in the effect that he couldn't.

13 Q Did he tell you why he couldn't?

14 A No, he did not. He just stated, "I can't."

15 Q What was your apprehension of why he couldn't? Why did
16 you feel he could not remove his hands?

17 A He was probably cold.

18 Q Now, at the time you saw Harry Haslam in Fort Ann for
19 the first time, how were you dressed, sir?

20 A I was in civilian clothes. I had a jacket on, and I
21 don't remember what the jacket was. It was not a suit.
22 I was not dressed in a suit, as I say, I been called
23 out on a night call, and I believe I was in a pair of
24 slacks, a shirt and a jacket.

25 Q Were you armed at that time?

1 A Yes, I was. I did carry a weapon.

2 Q Did you, at any time in front of the Ferran house in
3 Fort Ann withdraw your weapon and point it in the
4 direction of Mr. Haslam?

5 A No, I did not draw it.

6 Q What type of a vehicle were you driving?

7 A I believe the vehicle I had was a light blue Mercury.

8 Q Was it a New York Police vehicle?

9 A It is a New York State Police vehicle, unmarked.

10 Q Does it bear any external evidence that it is a Police
11 vehicle?

12 A No, it does not.

13 Q No flashing lights?

14 A No.

15 Q And no siren?

16 A It had a siren.

17 Q But it is not visible from the outside?

18 A No, it is not.

19 Q Does it have a special license plate?

20 A Plate, no.

21 Q Does it have a whip antenna?

22 A It does not.

23 Q Very well. Can you recall once again what you first
24 said to Harry Haslam when you saw him in Fort Ann?

25 A To the best of my recollection, I identified myself as

1 State Police. Then, "Where do you live," or words to
2 that effect.

3 Q And you first said that you were a State Police Officer?

4 A I always identify myself as a State Police Officer when
5 I am dressed like that because looking at me they would
6 not know I am a State Police Officer.

7 Q Was either Mr. or Mrs. Ferran outside of the house at
8 this point?

9 A No.

10 Q Did either Mr. or Mrs. Ferran come outside of the house
11 at any point while you were interviewing, we will say,
12 Mr. Haslam?

13 A Not to my recollection. I believe that they came out
14 after I was back in the car.

15 Q And how long a period of time was Harry Haslam on the
16 front porch, before he left the front porch in response
17 to your motions?

18 A As I say, just a minute or so.

19 Q And what questions did he answer for you while standing
20 on the front porch?

21 A The first question was --

22 (Whereupon the proceedings were recessed
23 for a few moments at the request of the Court.)

24 BY MR. KINDLON:

25 Q The question, I believe was --

1 A The first question; it would have been an answer as to
2 "Where do you live," and he said, "Here." And I told
3 him he did not live there because we had a call that
4 he did not live there.

5 THE COURT: Please keep your voice up!

6 THE WITNESS: I told him he did not
7 live there. We had a call that he did not live there
8 and I said, "What is your name and where are you from,"
9 and this is where he came out with that answer --

10 THE COURT: You are dropping your voice.
11 I can't hear you.

12 THE WITNESS: I am sorry. He came out
13 with the answer that he was Vinny Schemerhorn or
14 Schoonmaker, and originally from Albany.

15 BY MR. KINDLON:

16 Q And you can't recall whether he said Schemerhorn or
17 Schoonmaker?

18 A Right now, I can't. It was one or the other.

19 THE COURT: Are you sure it wasn't
20 Haslam?

21 THE WITNESS: It wasn't Haslam. It was
22 not Haslam.

23 BY MR. KINDLON:

24 Q Now, did you tell him, in words, to leave the front
25 porch?

1 A I called him to come over, yes, I did.

2 Q And where were you standing at that point?

3 A I believe that I was walking toward him.

4 Q Is there a sidewalk leading from the front porch of the
5 home to the curb where your automobile was parked?

6 A I don't remember but I believe there is, but I don't
7 remember.

8 Q Could you then estimate the distance between the spot
9 you were standing on and the porch when you told Haslam
10 to get off?

11 A It would be only a wild estimate; probably thirty feet.

12 Q Would it be safe to say that you were shouting?

13 A I was not shouting.

14 Q Was it raining at that time?

15 A As I say, I don't remember. It may have been raining
16 lightly at that time.

17 Q Did you approach the porch after you made the statement
18 that he should come to you?

19 A I believe it was during that time.

20 Q So, in other words, you continued walking?

21 A I was walking, yes.

22 Q And where did you come within arm's distance of Mr.
23 Haslam, in relation to the front porch or your car?

24 A I don't remember exactly.

25 Q What were your first words to Mr. Haslam, when you were

1 arm's length?

2 A I believe that this --

3 MR. DREYER: This is repetitious and I
4 am going to object.

5 THE COURT: I think that it tends to
6 be repetitious. Go ahead, and we will take the
7 conversation again.

8 THE WITNESS: I believe that this is
9 where the conversation was about the hands in the
10 pocket.

11 THE COURT: I would like you to bear in
12 mind that a jury panel of about 50 people are out there
13 waiting for us, and I don't want to get into a lot of
14 irrelevancy. I am not cutting you off in anyway, but
15 it is a very expensive way to hold a Miranda hearing.

16 MR. KINDLON: I understand that, Your
17 Honor, and I will try and move this along as quickly as
18 I can.

19 BY MR. KINDLON:

20 Q Did you place your hands anywhere on Mr. Haslam's body
21 at this point?

22 A I don't believe so. I did pat him down, but I believe
23 that that was back by the car.

24 Q Did you tell him to proceed to your vehicle, at this
25 point?

1 A I told him I wanted to talk to him and come on with me
2 over to the car.

3 Q And when you reached the car, what did you do?

4 A I believe this is the time that I patted him down, and
5 at the time that I did, I also advised him of his
6 rights.

7 Q Now, you testified that you do not carry the usual
8 Miranda Warning Cards that many of the police officers
9 carry?

10 THE COURT: That is what he said.

11 THE WITNESS: I do not, sir.

12 BY MR. KINDLON:

13 Q So that you gave him the Miranda warnings from your
14 memory?

15 A Yes.

16 Q After you patted him down, did you place handcuffs on
17 Mr. Haslam?

18 A Not at that time.

19 Q Did you place him in your automobile?

20 A Not until after I had arrested him and put handcuffs
21 on him.

22 Q At what point did you effect the arrest?

23 A After he told me, yes, he was there at the Post Office.

24 Q So you are saying that he said, "I was there," standing
25 outside of your automobile.

1 A Yes.

2 Q And your response then was to place handcuffs on him?

3 A I told him he was under arrest and I put handcuffs on
4 him.

5 Q Had you been holding the, had you been holding the
6 handcuffs prior to the time that you asked that
7 question?

8 A No, because I believe that the handcuffs were in the
9 glove compartment of my car at the time.

10 Q After you got Mr. Haslam in the car, did you offer him
11 food or beverage of any sort?

12 A Not in the car. When we got back up to the station I
13 asked him, did he care for any coffee and something to
14 eat.

15 Q Is that the aforescribed station?

16 A The Whitehall station, yes.

17 MR. KINDLON: I have about four more
18 questions, Your Honor, and then I can terminate.

19 THE COURT: Go ahead.

20 BY MR. KINDLON:

21 Q Did Mr. Haslam appear to you to be cold at the time that
22 you first saw him?

23 A My personal feeling, he was cold.

24 Q Did Mr. Haslam appear to be exhausted, or otherwise
25 very tired, when you first saw him?

1 A He seemed to be tired, yes, he did.

2 Q And did Mr. Haslam seem to be alert when you first saw
3 him?

4 A His conversation with me would indicate he was.

5 Q And did Mr. Haslam seem to be intoxicated or in any
6 other way physically impaired at that time?

7 A No, he didn't.

8 THE COURT: Was he mentally impaired,
9 in any way?

10 THE WITNESS: Not that I could see.

11 THE COURT: Were his answers responsive
12 to your questions?

13 THE WITNESS: Yes, they were.

14 THE COURT: And insofar as you directed
15 him to do anything, did he comply?

16 THE WITNESS: He did, other than taking
17 his hands out of his pockets.

18 MR. KINDLON: I have no further questions

19 MR. DREYER: I have one question on
20 redirect.

21 REDIRECT EXAMINATION

22 BY MR. DREYER:

23 Q You testified that there were statements made on the
24 porch, and in the automobile and in the Whitehall
25 station. How much time elapsed between the time that

1 he started talking to you, and the time that the
2 statements were completed?

3 A He was in my presence about an hour; about an hour.

4 Q So all statements were completed within an hour of his
5 arrest, is that correct?

6 A That is correct.

7 MR. DREYER: I have no further questions.

8 THE COURT: Is that it?

9 MR. KINDLON: Yes.

10 THE COURT: Do you rest?

11 MR. DREYER: I have no further
12 witnesses, Your Honor.

13 MR. KINDLON: I have witnesses.

14 THE COURT: All right, I will hear them.
15 (Whereupon the witness was excused.)

16 MR. KINDLON: My first witness is Mr.
17 Harry A. Haslam, the accused in this matter.

18 H A R R Y A. H A S L A M, having been
19 duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KINDLON:

22 Q For the record, would you please state your name?

23 A Harry Albright Haslam.

24 Q And your address and your age?

25 A Seven Henretta Street, Kingston, New York, and my age is

1 27.

2 Q Now, Mr. Haslam, I would like to direct your attention
3 to the map which is already in evidence, and I would
4 like to further direct your attention to approximately
5 8 p.m., on Saturday night, February 21st, 1976, and I
6 would like you to show to the Court, with this red pen,
7 if you would, where you were, approximately where you
8 were at that time?

9 (The witness marked the Exhibit.)

10 A Right across the bridge here, from Comstock, from the
11 prison, I would say around here (Indicating.)

12 THE COURT: Mark it with a "B" so that
13 we will know it is a bridge. You said right across
14 from the bridge.

15 (The witness marked the Exhibit.)

16 THE COURT: You are indicating a spot on
17 the west side of -- what is that?

18 MR. KINDLON: That is the Barge Canal.

19 THE COURT: Yes, sure.

20 BY MR. KINDLON:

21 Q Now, in narrative form, and as expeditiously as
22 possible, could you please describe where you traveled
23 from that point at 8 p.m. on February 21st, through
24 to the next day when you first encountered Investigator
25 Lewis in Fort Ann?

1 A Well, I was on this road here, and do you want me to
2 draw it out?

3 THE COURT: Just describe it and show
4 me where you went.

5 THE WITNESS: I went up into the hills,
6 and I went up a mountain, and down the other side, and
7 up another mountain, and down the other side, and -

8 THE COURT: Going in a westerly direction
9 from where you were, or northwesterly?

10 THE WITNESS: Yes.

11 THE COURT: All right.

12 THE WITNESS: I was in there for a good
13 five or six hours, up and down hills, and I got lost.
14 But when I eventually came out, I don't know what time
15 it was but I made a complete circle, and I wound up
16 damn near 200 feet from the place I went in.

17 BY MR. KINDLON:

18 Q Was it still dark when you came back out on the highway?

19 A Yes.

20 Q And what did you do after you got back on the highway?

21 A I started traveling to the road, here, and I crossed on
22 to the canal. I started traveling the canal.

23 THE COURT: Going south?

24 THE WITNESS: Yes.

25 BY MR. KINDLON:

1 Q Now, how long had you been in the woods, Harry, before
2 you found yourself on the Barge Canal?

3 A Roughly around 8 o'clock that night and it had to be
4 maybe eight hours.

5 THE COURT: And you say you were on the
6 canal and was it frozen?

7 THE WITNESS: I was in the woods for
8 eight hours, and then I came to the canal.

9 THE COURT: What did you mean "on the
10 canal" and were you walking on the canal?

11 THE WITNESS: Yes, it was frozen in
12 spots, and in spots it wasn't.

13 THE COURT: And you were walking along
14 the bank, is that it?

15 THE WITNESS: No, on the canal.

16 BY MR. KINDLON:

17 Q And do you mean it was not frozen in spots and there
18 was water on top of the ice?

19 A Yes, there was water on top of the ice, and spots where
20 it wasn't frozen, and there was water there. I walked
21 back across it a few times. I fell in a few times.

22 Q You fell into the ice cold water?

23 A I walked on the bank as much as possible, but that was
24 the only clear spot, was the canal, so I tried to stay
25 on the canal, and I was in the woods for at least eight

1 hours, and I started heading south on the canal, and by
2 the time I got maybe an hour from Fort Ann, it started
3 to get light.

4 I don't know what time it was, but an
5 hour, I would say, from Fort Ann it started to get light,
6 and when I got in Fort Ann -- it was raining all night
7 and I got in Fort Ann and I don't know, it was light
8 and maybe a couple of hours by the time that I met
9 Mr. Lewis.

10 Q Now, can you describe your physical condition as a
11 result -- describe your physical condition as a result
12 of being in the woods and on the canal?

13 A Well, after traveling through the woods all night, the
14 snow was up to my knees, and my legs were all cut up.
15 I was frozen. When I came down to the canal, I
16 remember at times in the woods, I got so cold because
17 I couldn't walk, because of sinking down in the snow,
18 and cutting my legs, that I had to crawl at times. I
19 made better progress crawling, and when I finally got
20 to the canal, I started walking on that and it was clear
21 and I could walk on it in spots, and then I had to walk
22 on the bank a while and I think about two times I fell
23 into my waist, and I would say maybe ten times I fell
24 in up to my knees.

25 Q You didn't get any sleep that night either, did you?

1 A No, I didn't. It was from eight o'clock until the next
2 morning that I was in the outside.

3 Q And can you tell the Court whether you were addicted to
4 the use of any narcotic drugs?

5 A At that time?

6 Q Yes.

7 A Yes, I was addicted to methadone, and I was using heroin
8 at the time.

9 THE COURT: How were you using heroin?

10 THE WITNESS: Injecting it in my veins.

11 BY MR. KINDLON:

12 Q And were you a patient at a Methadone Clinic?

13 A Yes.

14 Q Where?

15 A In Kingston, New York.

16 Q And very briefly, what did your connection with the
17 clinic require you to do?

18 A Every day I had to go there to be dosed, and drink a
19 bottle of methadone.

20 Q How often?

21 A Six days a week, and for Sunday I would pick up on
22 Saturday for Sunday, and they were closed on Sunday,
23 and they had counseling.

24 Q Now, can you describe what happens to you if you are
25 deprived, at that time, excuse me, what happened to

1 you if you were deprived of your daily dosage of
2 methadone?

3 A Well, you pick up on a 24-hour basis type. If I
4 picked it up today at 2, I would have to be there
5 tomorrow at 2, or I would start feeling the effects of
6 it; withdrawal.

7 Q Now, can you in chronological terms describe what the
8 effect of withdrawal is like? Can you answer?

9 A Well, the first day they start and it starts by getting
10 bad chills, and sweat, and then later on, it goes into
11 convulsions and muscle spasms.

12 Q Were you experiencing -- now, as of the morning of
13 February 22nd, 1976 -- that was Sunday? Yes, sir,
14 how long had you been, or had it been since you had
15 had a dosage of methadone?

16 A I would say that Friday, around 2 or 3 o'clock.

17 Q So you would say it was in the vicinity of 40 to 45
18 hours since you had had methadone?

19 A Well, until Sunday morning?

20 Q Yes.

21 A It was from Friday afternoon until Sunday morning I
22 still hadn't had any.

23 Q And were you beginning, or had you been beginning to
24 feel the effects of your failure to receive that dosage?

25 A Yes, on top of being out, and like I was all night

1 running, it sort of works out of your system faster.

2 Q In other words, the ill effect of no methadone set in
3 sooner because of the exercise that you got?

4 A Sure, all night in the woods.

5 Q All right, now, I would like to direct your attention
6 to that time when you first saw the investigator from
7 the State Police, and can you tell the Court your
8 recollection of the transactions between yourself and
9 the investigator?

10 A From the first time I saw him?

11 Q Correct.

12 A I seen him go by the house, and I heard a car stop, and
13 he backed up, and I was standing on the porch of the
14 house there, right in front of the door. I was waiting
15 for the lady to come back out.

16 And he stopped the car, and he got out
17 of the car, and he said, "You, come here."

18 And I proceeded to walk toward him and he
19 said, "What is your name?"

20 And I had told him Vincent Schoonmaker,
21 and he said, "Where do you live?"

22 I said, "Albany," and he said, "I am going
23 to place you under arrest," and he grabbed me by the
24 arm.

25 Q You say he grabbed you: where were you standing when he

1 grabbed you?

2 A Well I met him halfway from the car to the house.

3 Q Yes?

4 A He walked -- he called me over, and we met halfway; we
5 met in the middle.

6 Q Did he have his weapon out?

7 A Yes, he did, and he told me he was placing me under
8 arrest for a burglary, and he took me by the arm, and
9 walked me to the car, and he told me to take my hands
10 out of my pockets and I couldn't, because I was so cold.

11 Q Go ahead; go ahead.

12 A And he like pulled them out, and he patted me down and
13 he put the handcuffs on the back of me, and he put me
14 in the front seat of the car.

15 Q Were your handcuffs behind your back so that you had to
16 sit on your hands in effect?

17 A Right.

18 Q Did he, at any time up to this point, give you the
19 Miranda warning or advise you of your rights in any
20 way?

21 A No, he didn't.

22 MR. KINDLON: I have no further
23 questions.

24 THE COURT: Any cross-examination?

25 MR. DREYER: Yes, thank you, Your Honor.

CROSS EXAMINATION

1

2

BY MR. DREYER:

3

Q You stated that during the evening, or on the evening of Saturday, February 21st, 1976, you entered the woods at or near the bridge at Comstock, New York?

4

5

6

A Somewhere in the vicinity of the bridge.

7

8

Q And then you testified that you came out of the woods on to the road, is that correct?

9

A Yes.

10

Q Then on to the canal?

11

A Yes -- pardon me?

12

Q And then on to the canal?

13

A Right.

14

15

Q And how much time were you in the woods the first time before you came out on to the road?

16

17

18

19

20

A Well, if it was around eight, sometime when I went in, by judging it had to be six to eight hours, somewhere around that time before I -- before I found my way back out. I told you that I made a complete circle in the woods.

21

22

Q When you came back out on to the roadway, what did you do after that? Did you go back into the woods?

23

24

25

A No, I walked across -- there is a little set of trees there, and I would say it is maybe 20 feet wide, if you would call that a woods. It is on the other side of the

1 road, and then there is the canal. I walked through
2 there to get on to the canal.

3 Q And after you got on the canal, what did you do then?

4 A Then I started walking. I picked a direction, and I
5 started walking.

6 Q On the canal?

7 A Yes.

8 Q Now, when you went into the woods, were you running,
9 walking; how would you describe that?

10 A Running -- yes, running.

11 Q And the snow was deep, is that correct?

12 A Yes, it was.

13 Q And so it would be accurate to say that you were
14 burning up a lot of energy while you were walking and
15 running through the woods?

16 A Yes.

17 THE COURT: What time did you go into
18 the woods?

19 THE WITNESS: I don't know exactly what
20 time but it was between eight and nine, maybe. I didn't
21 know the exact time. I knew it was around that time.

22 BY MR. DREYER:

23 Q All right, now, if you were burning up a lot of energy
24 it would be fair to say that you weren't frozen while
25 you were running or walking through the woods, is that

1 correct?

2 A At times I was.

3 Q But at other times?

4 A At times I wasn't frozen. At times when I was frozen,
5 I was just laying there, and not being really able to
6 go on any further. I had to rest, and that is when I
7 got cold, and then I had to get up and run to get warm
8 again, or walk, or crawl.

9 Q But in other words, you were able to become warm by
10 moving around, is that correct?

11 A Yes, but my feet, my legs were frozen all of the times
12 because they were constantly in the snow. They were
13 never what you would call warm. They were completely
14 frozen all of the time.

15 Q What kind of a jacket did you wear?

16 A A jacket, a regular three-quarter length, I think.
17 Not very thick and I think I had a sports jacket on at
18 the time.

19 Q Underneath that jacket?

20 A Yes.

21 Q And were you wearing gloves?

22 A No.

23 Q And did you have gloves prior thereto, prior to going
24 into the woods?

25 A No.

1 Q Now, you testified that having been addicted to heroin,
2 that you were on the methadone program or project?

3 A Yes, sir.

4 Q And you stated that it is your testimony that the last
5 time that you had a dosage of methadone was on Friday
6 afternoon?

7 A Yes.

8 Q Friday?

9 A Yes, Friday around two or three.

10 Q When would you have ordinarily taken the next dosage?

11 A Saturday.

12 Q And what time?

13 A Anywhere from two to four on Saturday.

14 Q Well, now, what time did you leave -- strike that.

15 Prior to arriving in the Comstock area,
16 were you in another location, in New York State?
17 Were you in another city? Did you leave from Kingston
18 to come to Comstock, New York?

19 A Yes.

20 Q And about what time did you leave Kingston?

21 MR. KINDLON: I have to object but I
22 think we are getting far afield. The only thing in
23 issue is the voluntariness of his confession.

24 THE COURT: Overruled. I think this is
25 pinpointing quite a bit.

1 BY MR. DREYER:

2 Q What time did you leave Kingston and on what day?

3 A Well, Saturday? It was Saturday I had left earlier --
4 Saturday, Saturday morning, sometime. I don't know
5 exactly what time. Maybe it was eight or nine or ten
6 o'clock.

7 Q And you didn't --

8 A That is when I left Kingston.

9 Q And you knew that you were going to be away from Kingston
10 for the entire day, is that a fair statement?

11 A I left Kingston a couple of times that day. Are you
12 talking about which time?

13 Q Did there finally come a time when you left Kingston
14 knowing full well that you would be away for the entire
15 day, is that not so?

16 A There was a couple of times that I thought that I would
17 be away for the entire day.

18 THE COURT: What is the time that you
19 last left there that day, that is the question?

20 THE WITNESS: Four o'clock.

21 THE COURT: And did you seek methadone
22 treatment before you left there at four o'clock?

23 THE WITNESS: No, I didn't.

24 THE COURT: That is the normal time when
25 you would have gotten your methadone?

1 THE WITNESS: Between two and four, yes.

2 THE COURT: And you were there between
3 two and four, and why didn't you get it?

4 THE WITNESS: I missed it. I forgot the
5 reason why, but I remember missing it.

6 BY MR. DREYER:

7 Q Now, have you ever missed it before?

8 A Yes.

9 Q And on these prior occasions when you have missed your
10 methadone treatment, what was the longest time that you
11 have gone before you received another dosage?

12 A When I missed it, how long have I got along without it?

13 Q Yes, until you receive another dosage?

14 A Oh, to the next day.

15 Q So that you have, on prior occasions, you have missed
16 one 24-hour period?

17 A Yes.

18 Q And you have gone up to 48 hours before receiving
19 another dosage?

20 A Forty-eight hours?

21 Q Well, do you understand my question?

22 THE COURT: I don't think that it is material.

23 BY MR. DREYER:

24 Q Well, on this particular day, tell us what the effects
25 of your failing to take your methadone was?

1 A On Saturday?

2 Q Yes.

3 A What the effects were?

4 Q When did you start feeling the effects of your failing
5 to take the dosage of methadone on Saturday, if at all?

6 A Not really too much that Saturday. I would say 11
7 o'clock that night, maybe, Saturday night I started to
8 really feel it.

9 Q And what were the symptoms?

10 A Well, chills -- chills, and I am trying to think, and I
11 was in the woods at the same time so that the same
12 symptoms were there, only worse. You know, chills, and
13 then I would sweat, and muscle spasms, and maybe to
14 vomit once in a while. But that is the effects. I was
15 trying to choose between them, which is worse, either
16 being in the woods, and the chills that you get in the
17 woods, or the chills that I was getting from the
18 methadone -- not having it.

19 Q So that the symptoms that you experienced were from not
20 taking methadone, and they were the chills, the
21 symptoms?

22 A Chills and sweating and vomiting.

23 Q All right, now --

24 A That was that night, that Saturday night.

25 Q At some point you arrived at Fort Ann, New York, is that

1 correct?

2 A Yes, I did.

3 Q And after some point you identified yourself to Mr.
4 Lewis as a Vinnie Schoonmaker?

5 A Yes.

6 Q Is there a Vinnie Schoonmaker?

7 A Yes.

8 Q Do you know a Vinnie Schoonmaker?

9 A Yes, I do.

10 Q And you were able to tell Mr. Lewis a story -- strike
11 that. And you were able to tell Mr. Lewis that you were
12 someone, someone other than Harry Haslam, is that
13 correct? You knew enough to do that?

14 A Yes, sir.

15 Q And what did you tell the Ferrans when you got to their
16 home?

17 A That I would like to use their phone.

18 Q For what purpose?

19 A To call the tow truck.

20 Q For what purpose?

21 A To tow my car.

22 Q You told them that your car had what?

23 A Broken down.

24 Q Broken down?

25 A Yes, sir.

1 Q Did you tell them anything else? Did you tell them
2 your name?

3 A No, I didn't.

4 Q Now, you testified that when Mr. Lewis arrived at the
5 scene he motioned you over to his vehicle, is that
6 correct?

7 A Well, he called me and motioned me to come here.

8 Q And did he walk toward you at the same time?

9 A Yes.

10 Q And did he ask you where do you live?

11 A Eventually, yes.

12 Q And did you say "Here"?

13 A No, I didn't.

14 Q Did you deny that you said that you lived there?

15 A Yes.

16 Q You don't deny that you told Mr. Lewis that you were
17 Vinnie Schoonmaker and that you were from Kingston?

18 A No, Albany.

19 Q And did you then change your statement and tell him
20 that you were from Kingston, New York?

21 A No, I didn't.

22 THE COURT: You never told him that your
23 name was Harry Haslam and that you came from Kingston,
24 New York?

25 THE WITNESS: Not right then, no. Not at

1 first.

2 THE COURT: Eventually you did?

3 THE WITNESS: Yes, sir.

4 BY MR. DREYER:

5 Q It is your testimony that Mr. Lewis told you, when he
6 first saw you, that you were under arrest for burglary,
7 is that your testimony?

8 A Pardon me?

9 Q Mr. Lewis, when he first saw you said to you, "I am
10 arresting you for burglary"?

11 A First he asked my name but I gave him my name, and then
12 he said, "I am arresting you for burglary," and he
13 proceeded to pull out his gun, and grabbed me by the
14 arm and walked me to the car.

15 Q And during your testimony at that time, he did not know
16 that you were from Kingston, New York, because you did
17 not tell him?

18 A Say that again?

19 Q According to your testimony at that time, when you said
20 that you were under arrest, he did not know that you
21 were from Kingston, New York, because you did not tell
22 him?

23 A Not to the best of my knowledge. I don't think so but
24 I don't know whether he knew I was from Kingston,
25 New York, or not, if that was the question.

- 1 Q Prior to his saying that you were under arrest for
2 burglary, did you tell him about your car breaking down,
3 or being separated from friends?
- 4 A Prior to being arrested?
- 5 Q Prior to his saying, "I am placing you under arrest"?
- 6 A At some time during the night did I tell him my car had
7 broken down?
- 8 Q Prior to him saying to you, "I am placing you under
9 arrest for burglary," did you tell him or discuss any-
10 thing about being separated from your friends after
11 having your car break down?
- 12 A After I was put in the car, I said something about my
13 friends.
- 14 Q And prior to that time, prior to the time that he said
15 to you, "You are under arrest," did you discuss anything
16 with him about your being separated from your friends,
17 or about your car breaking down?
- 18 A Before he arrested me?
- 19 Q Right.
- 20 A No.
- 21 Q Before he said, "You are under arrest, I am taking you
22 in for burglary?"
- 23 A No, the first question was, "What is your name," and I
24 told him that and where I lived and I told him that and
25 he said, "You are under arrest for burglary."

1 THE COURT: What time did you get on to
2 the porch? How long had you been there?

3 THE WITNESS: It was light a few hours
4 before, when I got on the porch.

5 THE COURT: How long had you been there
6 before Mr. Lewis came up there?

7 THE WITNESS: On the porch? Five minutes.

8 THE COURT: Had you talked to the
9 occupants of the house?

10 THE WITNESS: Yes, I did.

11 THE COURT: And what did you do when you
12 got there?

13 THE WITNESS: I knocked on the door, and
14 a few little kids were in there and they answered the
15 door, and I said, "I would like to speak to your mother
16 or father," and they closed the door, and a woman came
17 to the door, and she said, "Yes?"

18 And then I said, "I would like to use
19 your phone, my car is broken down," and she said, "Wait
20 a minute, I will have to wake up my husband."

21 So she closed the door, and I sat there
22 for two or three minutes, and that is when Mr. Lewis
23 came.

24 THE COURT: I see.

25 MR. DREYER: I have no further questions.

1 MR. KINDLON: I have no further questions.

2 THE COURT: All right, you are excused.

3 Any other witnesses?

4 MR. KINDLON: I will call John Burden.

5 J O H N B U R D E N, having been duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KINDLON:

9 Q For the record, would you state your name, please?

10 A John Burden.

11 Q And where do you live, Mr. Burden?

12 A In Kingston.

13 Q And where are you employed?

14 A It is the Ulster County Drug Abuse Services.

15 Q And in what capacity?

16 A A drug abuse counselor.

17 Q And, now, could you very briefly describe the nature of
18 your duties?

19 A I am -- I talk to various patients who are in treatment
20 for heroin addiction. We treat them with methadone,
21 daily doses.

22 THE COURT: Would you cut through all of
23 this and I am sure we can stipulate a lot of this.

24 MR. KINDLON: Yes, Your Honor.

25 BY MR. KINDLON:

1 Q Did you have occasion to deal with Harry Haslam in the
2 course of your work?

3 A Yes.

4 Q And what is the nature of your dealings with Mr. Haslam?

5 A Well, I see him at least once a week, you know, one and
6 sometimes twice a week for counseling and I talk to him,
7 and I try to --

8 THE COURT: Keep your voice up. I am
9 having an awful hard time hearing you.

10 THE WITNESS: I am sorry but I have a cold
11 and a sore throat. I see him at least once a week.

12 THE COURT: Go back to the time, and put
13 it right to him.

14 BY MR. KINDLON:

15 Q To your knowledge, did Harry Haslam fail to take his
16 required methadone dosage on the weekend of February
17 21st -- 22nd?

18 A Yes, to the best of my knowledge he missed the pick-up
19 on a Saturday. He didn't have his methadone on that
20 Saturday, and I had in the record that I brought with
21 me that he was incarcerated over that weekend in his
22 case record, and he missed it.

23 MR. KINDLON: May we hold a second, Your
24 Honor?

25 I understand, Your Honor, from reading

1 the Federal Rules of Evidence that a non-professional
2 person can offer an opinion based on his experience,
3 and without --

4 MR. DREYER: We have no objection.

5 THE COURT: Put it to him. I assume
6 that I know my business, and go ahead.

7 BY MR. KINDLON:

8 Q Mr. Burden, on the basis of your experience dealing
9 with persons who are on methadone maintenance programs,
10 can I ask, for the Court, what the effect of missing
11 a required dosage would be?

12 A They would have -- it would be like a severe case of
13 the flu. You get aches in the joints, and you get
14 muscle spasms, and nauseous, and you feel chills, and
15 then the sweats, and then chills and sweats and just
16 like having a really bad flu.

17 Q So on the basis of your experience do the normal
18 symptoms that come with withdrawal in any way affect a
19 person's mental ability or alertness?

20 A That is kind of a gray area, but I imagine like if I
21 had the flu, like I wasn't really on top of everything,
22 and I wasn't very sharp in my -- I wasn't alert, I
23 would say. I would feel foggy.

24 Q How long is the period of withdrawal, the normal period
25 of withdrawal from methadone?

1 A It averages from two weeks to six weeks.

2 Q And the person's abilities and physical capacities
3 would be impaired during the entire course of that
4 withdrawal, is that correct?

5 A Right.

6 MR. KINDLON: I have no further
7 questions.

8 THE COURT: What about in 24 hours?

9 THE WITNESS: Do you mean would a person--

10 THE COURT: Without it for 24 hours?

11 THE WITNESS: It would hold a person for
12 about 24 hours. After that they would start to feel
13 progressively sicker.

14 THE COURT: All right.

15 MR. DREYER: May I cross-examine?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. DREYER:

19 Q You say that to the best of recollection, that he failed
20 to pick up the methadone on February 21st, 1976?

21 A Right.

22 Q And there were no records that you consulted --

23 THE COURT: He said he had a record out
24 there.

25 MR. KINDLON: In the interest of time, I

1 didn't put it in.

2 THE COURT: He says he had a record out
3 there. Do you want it?

4 MR. DREYER: I didn't hear that.

5 THE COURT: You do have a record out
6 there?

7 THE WITNESS: I brought the records with
8 me.

9 BY MR. DREYER:

10 Q You say that the question of whether or not this affects
11 mental capacity is a gray area, is that correct?

12 A Well, a person would -- it depends on an individual,
13 right.

14 Q And you are familiar with intoxication and drunkenness?

15 A Right.

16 Q And do you agree that a consumption of alcohol can
17 affect mental capacity?

18 A Right.

19 Q And it is your testimony, however, that about withdrawal
20 from methadone it does not in your experience, lead to
21 the same type of mental incapacity that, let us say,
22 drunkenness or intoxication does?

23 A It is different, I would say, yes.

24 Q But it manifests itself mainly in the physical symptoms
25 of sweating and chills and nausea?

1 A Right.

2 Q And in your experience -- well, strike that. As a
3 result of your counseling Mr. Haslam, do you know
4 whether or not on prior occasions he failed to take
5 methadone?

6 A He had, yes.

7 Q Well, since you said symptoms are a question of an
8 individual matter, do you know when Mr. Haslam, on
9 prior occasions, started to manifest symptoms of chills,
10 sweating, nausea, etc?

11 A That could also be if he shot heroin -- if he missed a
12 pick-up and he took any other drugs, mainly illicit
13 methadone or heroin, he would not come in sick, and I
14 mean --

15 Q So you have no information?

16 A I have dealt with some patients, and seeing one patient
17 come in after he missed a pick-up, or coming in sick
18 but nothing would stand out in my mind. It is not
19 outstanding.

20 Q Is it fair to say that within from 24 hours to 48 hours
21 of not having taken methadone that Harry Haslam would
22 have, if he suffered any ill effect, suffer only minor
23 ill effects, and that would be the sweats and the chills
24 etc.?

25 A No, because the -- that is really -- well, it depends on

1 the individual. Some people get very, very sick after,
2 you know, even after just 24 hours.

3 MR. DREYER: I have no further questions.

4 MR. KINDLON: No redirect.

5 THE COURT: You are excused.

6 (Whereupon the witness was excused.)

7 THE COURT: Any other witnesses?

8 MR. KINDLON: No.

9 THE COURT: Do you rest?

10 MR. KINDLON: Yes.

11 THE COURT: The Court denies the motion.

12 More time might add to the style of this opinion. But
13 it is plain to the Court that Mr. Lewis did give the
14 defendant his Miranda Warning and the fact that he had
15 no card is of no significance at all. His having been
16 an officer for ten years, I am sure that he knows the
17 Miranda Warning by heart, and it is almost any layman
18 who knows them now. They have been so much the subject
19 of t.v. programs, and radio programs, and newspaper
20 programs, and endless Federal hearings. But more than
21 that, it is perfectly plain to the Court that the
22 defendant was entirely rational, and in control of his
23 mental faculties, and the fact that he wandered through
24 the woods, that he came back and did not go along the
25 road, that paralleled the Barge Canal but walked in the

1 canal, itself, shows at the very least an alertness to
2 the fact that he might be apprehended if he walked along
3 the road.

4 The Court, I think, can infer from the
5 proximity of his being in or near the bridge and the
6 fact that he was in the vicinity of the scene of the
7 crime, which can't be more than a very short distance
8 away from the western end of that bridge to the scene
9 of the crime, and the fact that he went into the woods,
10 that he was obviously running from something, and that
11 impression is fortified by his going along the Barge
12 Canal, rather than along the parallel road.

13 There is no question that he was on
14 the porch of the Ferran's at 8:25 in the morning, and
15 that he was a stranger, and that he talked to Mrs. Ferran,
16 that he was rational with her, and that he explained,
17 albeit perhaps falsely that his truck broke down, but
18 whether it was true or false, either way, it shows
19 rational thinking. If false, it shows again his attempt
20 to avoid detection, and to avoid apprehension.

21 If true, it shows that he was alert
22 enough to know that he was in difficulty, and that he
23 needed help. He asked to use a phone. He remained on
24 the porch only a few minutes when Mr. Lewis came along.

25 It is perfectly plain that he is of

1 sufficient age and understanding to know his way around,
2 and the fact that he has been addicted to drugs, in
3 itself, is evidence of street knowledge.

4 There is no showing here that Mr. Lewis
5 did anything whatever to overbear his will, that he
6 detained him too long, or that he denied him the
7 comforts that were, such as were available at that time.
8 He put him into a heated car and drove to the barracks
9 at Whitehall. They were only there 20 minutes.

10 His answers were rational, and I don't
11 credit his testimony insofar as it conflicts with that
12 of Agent Lewis having observed the demeanor of both,
13 and bearing in mind the strong interest of the witness
14 in the outcome of this hearing, and a favorable outcome
15 to him.

16 Also having observed both of their
17 demeanors, the Court is satisfied and accepts the
18 testimony of Agent Lewis.

19 There is no indication, even on the
20 witness's own testimony that he, at any time protested,
21 and that he at any time said, "I want a lawyer," that
22 he at any time asked for anything that he was denied.
23 There is no testimony on his part that he did not know
24 what he was doing, albeit, he said he was tired and cold
25 and wet as he unquestionably was, but assuming that,

1 even accepting the testimony of Mr. Burden to the effect
2 that he might be experiencing the onset of withdrawal
3 symptoms in the form of chills, there is no showing here
4 that it, in any way, impaired his mental capacity to
5 know what he was doing, and to act freely and voluntary
6 under the circumstances, and when confronted with what
7 must have seemed to him to be overwhelming evidence of
8 the fact that his two confederates in the crime had been
9 caught and apprehended, it was plain to him that the
10 wiser course was to tell the officer the truth, and
11 that is what he did.

12 The Court therefore denies the motion,
13 and he will proceed to trial.

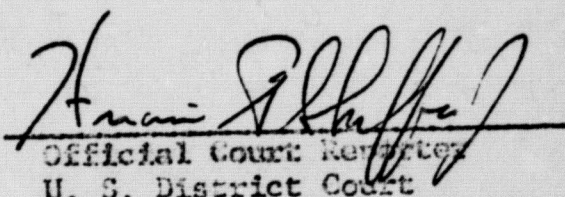
14 (Whereupon the proceedings in the
15 Supression Hearing were concluded and the matter was
16 recessed to the courtroom.)

17
18 * * * * *

19 R E P O R T E R ' S C E R T I F I C A T E
20

21 I, HIRAM F. SHEFFER, Official
22 Court Reporter, in and for the United States
23 District Court, Northern District of New York,
24 do certify the foregoing record to be a true
25 and accurate transcription of the proceedings

1 had at the time and place noted in the
2 heading hereof.
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Official Court Reporter
U. S. District Court
Northern District of New York